III. THIS APPEAL SHOULD BE DISMISSED BECAUSE APPELLANT HAS NOT EXHAUSTED HIS STATE AND FEDERAL REMEDIES.

Blatchford has available state and federal remedies which should properly be pursued prior to any review by this Court. Blatchford's first step is to complete his Rule 57 proceedings in state court. He may then file habeas corpus proceedings in state district court. Cox v. Raburn, 314 F.2d 856 (10th Cir. 1963), cert. denied, 374 U.S. 853 (1963); Section 44-1-11 NMSA 1978. Following exhaustion of state remedies, Duckworth v. Serrano, 454 U.S. 1 (1981), he may pursue his habeas corpus proceedings in federal district court and federal appellate court before returning to this Court. 28 U.S.C. Sections 2254, 2253; F.R.A.P. Rule 22b; U.S. Sup. Ct. Rule 27. Accordingly, review by this Court at this time is premature.

IV. THIS APPEAL SHOULD BE DISMISSED FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION.

The question Blatchford seeks to raise before this Court is not a substantial federal question. The decision whether a particular community is a dependent Indian community under 18 U.S.C. Section 1151(b) turns upon analysis of the particular facts in each case. It requires examination of evidence such as maps, historical documents and population figures. Blatchford recognizes that the question of whether Yah-ta-Hey, New Mexico is a "dependent Indian community" is one of fact. Jurisdictional Statement at 9.

The question in this case turns on its particular facts and addresses only a particular locale; consequently any decision reached on this issue is not likely to be one of national significance. This Court in previous instances has refused to

accept cases where the issue involved determining whether land is a "dependent Indian community". E.g., United States v. South Dakota, 665 F.2d 837 (8th Cir. 1981), cert. denied, __ U.S. ___ (No. 81-1910, October 4, 1982); Wedell v. Meierhenry, 636 F.2d 211 (8th Cir. 1980), cert. denied, 451 U.S. 941 (1981); C.M.G. v. State, 594 P.2d 798 (Okla. Crim. App.), 444 U.S. 992 (1979); State v. Dana, 404 A.2d 551 (Me. 1979), cert. denied, 444 U.S. 1098 (1980). This case would be properly dismissed for want of a substantial federal question.

CONCLUSION

The Appellee respectfully urges the Court to dismiss this case for lack of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed to opposing counsel, Don Juneau, P.O. Box 40536, Albuquerque, New Mexico 87196 and Donna Chavez, Navajo Legal Aid and Defender Service, P.O. Box 662, Window Rock, Arizona 85615 of record this 12 day of December, 1983.

Eddie Michael Gallegos
Assistant Attorney General

APPENDIX A

Rule 57. Post-conviction motions.

(a) Scope of rule. This rule governs the procedure in the district court on a motion to vacate, set aside or correct a sentence by a person in custody pursuant to a judgment of that court for a determination that such custody is, or will be, in violation of the constitution or laws of the state of New Mexico or of the United States; that the district court was without jurisdiction to impose such sentence; that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack. The order of the district court on a motion under this rule is final and not subject to appeal.

(d) Motion to be specific. A motion shall be directed to a specific claim or claims for relief.

(e) Filing. A motion under these rules shall be filed in the office of the clerk of the district court whose sentence is attacked. Upon receipt, the clerk of the district court shall file the motion in the criminal case in which the sentence was imposed.

(f) Initial consideration; summary dismissal. The motion, together will all the files, records and transcripts relating to the judgment under attack shall be examined promptly by the court. If it plainly appears from the face of the motion, any

annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief as a matter of law, the court shall order a summary dismissal.

(g) Response by the state. If the court does not order a summary dismissal, it shall direct the clerk to serve a copy of the motion on the district attorney. Within 10 days after service of a copy of the motion, the district attorney shall file a response.

(h) Further determination by the court. After the response is filed, the court shall determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the court shall make such disposition of the motion as justice dictates.

(i) Evidentiary hearing. If an evidentiary hearing is required, the court shall appoint counsel for an indigent movant and shall conduct the hearing as promptly as practicable.

(j) Habeas corpus. A prisoner must exhaust his remedy under this rule before applying for a writ of habeas corpus. [Adopted, effective September 1, 1975].